

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

CHRISTOPHER
MORRESI,

ANTHONY

Plaintiff,

vs.

DOUGLAS COUNTY
CORRECTIONAL CENTER,

Defendant.

8:21CV357

MEMORANDUM AND ORDER

After the court dismissed this matter without prejudice for failure to prosecute this matter diligently and for failure to comply with the court's orders (Filings 21 & 22), the Plaintiff filed a Notice of Appeal (Filing 23). After realizing that the court mistakenly omitted some cautionary language from its Judgment, the court issued a Memorandum and Order (Filing 29) warning Plaintiff that filing a notice of appeal would make her liable for payment of the full \$505.00 appellate filing fee regardless of the outcome of her appeal. The court also granted Plaintiff 14 days within which to withdraw her Notice of Appeal if she wished to do so. The court then entered an Amended Judgment on March 31, 2022, containing the cautionary language. (Filing 30.) Plaintiff filed a Motion to Withdraw Appeal on April 13, 2022, which the court granted, and her appeal was dismissed on April 14, 2022. (Filings 31 & 32.) On May 25, 2022, Plaintiff filed a Motion to Proceed with Appeal (filing 33) and a Motion for Appointment of Counsel on Appeal (filing 34).

Upon careful consideration, the court liberally construes Plaintiff's Motion to Proceed with Appeal (filing 33) as a Notice of Appeal and will direct the Clerk of the Court to process Plaintiff's appeal to the Eighth Circuit Court of Appeals. The court will also direct the Clerk of the Court to transmit Plaintiff's Motion for

Appointment of Counsel on Appeal (filing 34) to the Eighth Circuit Court of Appeals as such motion should be addressed by that court.

Because Plaintiff was permitted to proceed in forma pauperis in this action on October 7, 2021, she may now proceed in forma pauperis on appeal without further authorization. Fed. R. App. P. 24(a)(3).

The Prison Litigation Reform Act (“PLRA”) requires prisoner plaintiffs to pay the full amount of the court’s \$505.00 appellate filing fee by making monthly payments to the court, even if the prisoner is proceeding in forma pauperis. 28 U.S.C. § 1915(b). The PLRA “makes prisoners responsible for their filing fees the moment the prisoner brings a civil action or files an appeal.” *Jackson v. N.P. Dodge Realty Co.*, 173 F. Supp. 2d 951, 952 (D. Neb. 2001) (citing *In re Tyler*, 110 F.3d 528, 529–30 (8th Cir. 1997)). The appellate filing fee is assessed when the district court receives the prisoner’s notice of appeal. *Henderson v. Norris*, 129 F.3d 481, 485 (8th Cir. 1997).

Plaintiff must pay an initial partial filing fee in the amount of 20 percent of the greater of Plaintiff’s average monthly account balance or average monthly deposits for the six months preceding the filing of the notice of appeal. *See* 28 U.S.C. § 1915(b)(1). Accordingly, based on the records before the court, the initial partial filing fee is \$79.01, based on average monthly deposits of \$395.05. (*See* Filing 28.)

In addition to the initial partial filing fee, Plaintiff must “make monthly payments of 20 percent of the preceding month’s income credited to the prisoner’s account.” 28 U.S.C. § 1915(b)(2). The statute places the burden on the prisoner’s institution to collect the additional monthly payments and forward them to the court as follows:

After payment of the initial partial filing fee, the prisoner shall be required to make monthly payments of 20 percent of the preceding

month's income credited to the prisoner's account. The agency having custody of the prisoner shall forward payments from the prisoner's account to the clerk of the court each time the amount in the account exceeds \$10 until the filing fees are paid.

28 U.S.C. § 1915(b)(2). Therefore, after payment in full of the initial partial filing fee, the remaining installments shall be collected pursuant to this procedure.

IT IS THEREFORE ORDERED that:

1. Plaintiff's Motion to Proceed with Appeal (filing 33) is granted to the extent that the court will construe Plaintiff's Motion as a Notice of Appeal. The Clerk of the Court is directed to process Plaintiff's Notice of Appeal (filing 33) in accordance with their normal procedures.

2. The Clerk of the Court is directed to terminate the motion event for Filing 34, Plaintiff's Motion for Appointment of Counsel on Appeal, and transmit Filing 34 to the Eighth Circuit Court of Appeals as a supplement to Plaintiff's Notice of Appeal.

3. Plaintiff may proceed on appeal in forma pauperis.

4. Plaintiff shall pay an initial partial filing fee of \$79.01 within 30 days unless an enlargement of time is granted in response to a written motion.

5. After payment of the initial partial filing fee, Plaintiff's institution shall collect the additional monthly payments in the manner set forth in 28 U.S.C. § 1915(b)(2), quoted above, and shall forward those installments to the court.

6. The Clerk of the Court is directed to send a copy of this order to the appropriate official at Plaintiff's institution.

Dated this 26th day of May, 2022.

BY THE COURT:

A handwritten signature in blue ink that reads "Richard G. Kopf". The signature is written in a cursive, flowing style.

Richard G. Kopf
Senior United States District Judge